

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF SEATTLE TO
JAMES A. JESSUP

ALLISON FAIRVIEW NEIGHBORHOOD
ASSOCIATION,

Appellant,

v.

CITY OF SEATTLE and JAMES A.
JESSUP,

Respondents.

SHB No. 205

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A hearing in this matter, the request for review of a substantial development permit for the construction of an office building, was held in Seattle, Washington on May 6 and 7, 1976. Mr. Kenneth Hartung, a member of the Allison Fairview Neighborhood Association represented the appellant, Ross A. Radley, Assistant Corporation Counsel appeared for respondent City of Seattle; respondent-permittee James A. Jessup appeared pro se.

1 Having heard the testimony, having examined the exhibits,
2 having considered the pleadings and contentions in this matter,
3 the Board comes to these

4 FINDINGS OF FACT

5 I.

6 The instant project is to be constructed at 3123 Fairview Avenue
7 East on the east shore of Lake Union, Seattle, Washington. 50' x 110'
8 of the property is dryland and 50' x 135' of the lot is submerged.
9 The former is presently vacant land covered with thick brush; the
10 latter is fully developed by a 132' dock with finger piers which
11 provide both boat and houseboat moorage. The permittee's own residence
12 is one of the two houseboats now moored on the property. No portion
13 of the proposed office building will extend over water.

14 The immediate neighborhood is a mix of older, single-family
15 residences, commercial concerns, and a variety of marine related uses.
16 Its underlying zoning is Manufacturing.

17 The site is bounded on the north by houseboats and an older residence
18 on the east by Fairview Avenue East, on the south by small clustered
19 residences and a marina, and on the west by Lake Union. The Monson
20 Boat Works, an intensive marine service operation, abuts the neighboring
21 property on the north and Ross Laboratories, a commercial building wider
22 than the subject lot and approximately 30' in height is directly east
23 of the property across Fairview Avenue East.

24 II.

25 An application for a substantial development permit was filed by
26 the permittee on February 25, 1975 and approved by the City on August 19,
27 1975. This permit authorized the construction of a "3-story wood frame

1 office or apartment building over a basement parking garage with
2 additional off-street parking -- with 12 new piles to be driven to
3 improve existing finger piers for boat moorage". The City of Seattle
4 thereafter rescinded its approval pending further community input
5 on the specifics of the project.

6 Responsive to community concerns, the permittee on September 17,
7 1975 filed revised site plans which reduced the size of the proposed
8 building from 35' high with 7,285 square feet of space to a height
9 of 28' with 4,885 square feet available for office, rather than
10 apartment, space. A Declaration of No Significant Impact was made
11 on September 22, 1975. On October 14, 1975 a substantial development
12 permit was issued which incorporated the revised dimensions and imposed
13 the following conditions: "1) applicant provides regulated public
14 access which is indicated on signs near Fairview Avenue East, 2)
15 demolition and construction confined to 8:00 a.m. to 5:00 p.m. weekdays."

16 Appellant timely filed its appeal on November 13, 1975.

17 III.

18 The appellant Neighborhood Association is comprised largely of
19 residents who rent small former summer homes in the immediate area.
20 Appellant characterizes its shoreline community as lower income and
21 unique in the random clustering of the homes and the diversity of
22 activity which surrounds them. Appellant anticipates an adverse effect
23 on the present compatible balance of the multi-uses if the project
24 is completed.

25 Specifically the Association alleges that the project 1) fails to
26 comply with Draft Four of Seattle's Master Program with regard to its
27 FINAL FINDINGS OF FACT,
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1 use designation and requirements as to parking, lot coverage, and side
2 yards, 2) was issued on the basis of incomplete and inaccurate informatio
3 and 3) violates the "spirit and intent" of the Shoreline Management Act
4 (SMA).

5 IV

6 The office building, as now designed, is 32' x 73' with from five
7 to eight offices contemplated. The first floor will be only 24' wide
8 to a height of eight feet. The aesthetics of the building's design
9 or exterior are not at issue.

10 Considering only that space which is enclosed, the Board finds
11 that the lot coverage of the office building (2,564 square feet) and
12 the two houseboats (1,092 square feet) is 29.8%. The view corridor
13 created by the present design of the building is 51% although such
14 corridor does include the area allocated for on-site parking spaces.

15 V.

16 Under Seattle's Zoning Code, incorporated by reference in
17 Draft Four, parking space requirements relate to the ultimate use
18 of the individual offices. The permittee projects his tenants as
19 being a combination of professional offices (one space/400 square
20 gross floor area required) and offices not providing customer services
21 (one space/800 square gross floor area). The total number of spaces
22 required by the occupancy of the premises is thus estimated as nine
23 spaces. The revised parking plan (Exhibit No. R-4), submitted by the
24 permittee subsequent to the filing of this request for review and
25 approved by the building department as consistent with code
26 requirements, provides four enclosed and five exterior spaces on

27 FINAL FINDINGS OF FACT,
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1 site. Seven additional spaces are available on the gravel street
2 right-of-way between the site property line and Fairview Avenue East.
3 Though not specified in the instant permit, it was the permittee's
4 testimony that he intends to pave and stripe the street right-of-way
5 for the seven spaces to maximize its utility and to minimize the dust
6 effect.

7 The demand for parking created by occupants of the houseboats
8 and the boat moorages on the property was not calculated in establishing
9 requirements for the instant project.

10 VI.

11 Draft Four of Seattle's Master Program was in being at the time the
12 permit was issued in this matter (October 16, 1975). By cross-
13 referencing those Tables and sections in Draft Four which are clear¹
14 and enforceable², the instant project emerges as a commercial office
15 building on a waterfront land lot in an Urban Stable environment, a use
16 which is permissible only if regulated public access is provided.

17 Draft Four's bulk requirements pertinent to this appeal were:
18 lot coverage - 30% and side yards - 40%. "Lot coverage" under Draft
19 Four is that portion of a lot occupied by a principal building and
20 its accessory buildings, expressed as a percentage of the total lot
21

22 1/ e.g. Section 5.3.03 which defines waterfront lots by
23 reference to a non-existent section was disregarded by
the Board.

24 2/ e.g. Under RCW 90 58.140(11) permits for conditional
uses are to be submitted to the Department of Ecology
for approval only under approved, not draft, master
26 programs.

1 area.³ A "Side Yard" under Draft Four was defined as an "open
2 space" which was not to include "parking lots . . .".

3 After extensive review and comparison of those sections of the
4 drafts of Seattle's Master Program⁴ relative to the contested aspects
5 of this project, the Board finds that the instant project's use
6 designation, its environment classification, as well as both lot
7 coverage and side yard bulk requirements were altered repeatedly and
8 substantially throughout the draft process. Although Seattle City
9 Council, by Resolution No. 25173, adopted its Proposed Master Program,
10 it has not to date been approved by the Department of Ecology.

11 VII.

12 Public access to the water will be regulated, per permit
13 condition one, by posted signs. According to the site diagram
14 submitted with and made a part of the application, a brick path
15 along the southern property line will lead to a small public court
16 yard with access to the existing dock. A public toilet facility
17 serving both pedestrian and bicycle traffic will be constructed at
18 the southeastern corner of the proposed building.

19 From these Findings, the Board comes to these
20

21 3/ While appellants urged a definition of lot coverage
22 broader than the building departments consideration
23 of only enclosed space, no such expansion of "lot
coverage" was articulated in the draft.

24 4/ See, Draft One - Jan., 1974
25 " Two - June, 1974
26 " Three - July, 1974
" Five - Nov., 1975
" Six - undated

1 CONCLUSIONS OF LAW

2 I.

3 Pursuant to RCW 90.58.140(2)(a), standards which the Board is to
4 apply in reviewing a substantial development permit are (a) the policy
5 of the SMA, RCW 90.58.020, (b) guidelines and regulations promulgated
6 pursuant thereto by the Department of Ecology, and (c) "so far as can
7 be ascertained, the master program being developed for the area."

8 II.

9 In determining the ascertainability of a draft master program or
10 sections thereof, the Board has considered the following: 1) is the
11 language of the draft in being at the time the permit was issued clear
12 and unambiguous on its face, 2) does the language exceed statutory
13 authority for development of master programs, 3) was the challenged
14 designation or requirement treated consistently in prior and/or
15 subsequent draft master programs, and 4) has a master program for the
16 issuing agency been approved to date.⁵

17
18 5/ See, SHB No. 190, Conclusion of Law VI, p. 9
19 Maloney, Herrington, Freesz and Lund and Seattle-
First National Bank v City of Seattle,

20 SHB Nos. 194 and 194-A, Conclusion of Law III, p. 10
21 Portage Bay-Roanoke Park Community Council, et al.
and David Hurlbut v City of Seattle

22 SHB Nos. 203, 203-A, 203-B and 203-C, Conclusion of
23 Law III, p. 8
Wallingford Community Council, Inc. et al. v. City
24 of Seattle, et al.;

25 SHB Nos. 175 and 178, Conclusion of Law III, p. 5
Hugh H. Benton III v. City of Seattle;

26 SHB No. 156, Conclusion of Law IV, p. 5
27 J. W. Adams v. City of Seattle;

1 In applying each of these considerations to the instant matter,
2 the Board must conclude that little weight can be given to Draft Four
3 or any subsequent draft of Seattle's Master Program as a controlling
4 standard in this instance. The Board must rely therefore in its decision
5 on the project's consistency or inconsistency with the SMA and the
6 Department of Ecology Guidelines relative thereto.

7 III.

8 Appellant has failed to meet its burden of proof that any specific
9 provision of the SMA is violated by the issuance of the permit as
10 conditioned or that, as alleged, the project violates the spirit and
11 intent of the Act.

12 The instant project, the construction of a commercial office
13 building, is a non-water related use as this term has been defined
14 by the Shorelines Hearings Board.⁶ The permittee acknowledges that
15 no assurance that individual tenants will be engaged in water dependent
16 or even water-related activities can be given. However, by assuring
17 regulated public access to Lake Union as found in Findings of Fact VII,
18 the project thereby becomes a use consistent with the policies of the
19 SMA.⁷

20 The appellant did not establish that any adverse environmental
21

22 ^{6/} See, SHB Nos. 108 and 112, Conclusion of Law IV, p. 8
23 George Yount and State of Washington, Department of
24 Ecology and Slade Gorton, Attorney General v.
Snohomish County and Edward W. Hayes.

25 ^{7/} See, SHB Nos. 158 and 158-A, Conclusion of Law II, pp. 8 & 9
26 James T. and Joan Smith, et al. v. City of Seattle
and New England Fish Company.

1 effects would result from construction of the project. In particular,
2 the Board concludes that the number of parking spaces provided is
3 adequate because of the staggered impact resulting from the
4 primarily weekday use of the spaces by office tenants. However, the
5 Board would have the City note that in its assessment of adequacy,
6 the Board considered the projected impact of the cumulative demand
7 created by both existing and projected uses.

8 IV.

9 Inconsistency with Department of Ecology Guidelines promulgated
10 pursuant to the SMA was not alleged by the appellant. Indeed such
11 Guideline's encourage the location of commercial activities in
12 shoreline areas where current commercial uses exist.⁸

13 From these Conclusions, the Shorelines Hearings Board makes
14 and enters this
15

16
17 8/ (4) Commercial development . . . (a) Although many
18 commercial developments benefit by a shoreline
19 location, priority should be given to those
20 commercial developments which are particularly
21 dependent on their location and/or use of the
22 shorelines of the state and other development
23 that will provide an opportunity for substantial
24 numbers of the people to enjoy the shorelines of
25 the state.

26 (b) New commercial developments on shorelines
27 should be encouraged to locate in those areas where
current commercial uses exist.

(c) An assessment should be made of the effect a
commercial structure will have on a scenic view
significant to a given area or enjoyed by a significant
number of people.

(d) Parking facilities should be placed inland
away from the immediate water's edge and recreational
beaches. . . .

ORDER

The action of respondent City of Seattle granting appellant's application for a substantial development permit should be and hereby is affirmed.

DATED this 30th day of June, 1976.

SEORELINES HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Robert E. Beaty
ROBERT E. BEATY, Member

Gordon Y. Erickson
GORDON Y. ERICKSEN, Member

Walt Woodward
WALT WOODWARD, Member